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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,459	10/16/2003	Frank Clarke	P1519 US	3011

28390 7590 06/10/2005
MEDTRONIC VASCULAR, INC.
IP LEGAL DEPARTMENT
3576 UNOCAL PLACE
SANTA ROSA, CA 95403

EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,459

Applicant(s)

CLARKE ET AL.

Examiner

Jimmy G Foster

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6-8 and 10 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3728

1) This application contains claim 9 drawn to an invention nonelected without traverse in 06 August 2004.

2) The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3) Claims 1, 4 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ross et al (5,318,543). In the reference of Ross et al there is provided a tray base at tray 13, which includes multiple recesses. In one of the recesses is a coiled nasogastric tube 14, as shown in Figure 2.

The tray is closed by a lid at 12 (see Fig. 1). The tray and lid are inserted into a plastic wrapper/pouch 11.

Although the tube 14 is clearly not intended to be used to deliver/dispense a stent, it is however capable of delivering/dispersing a stent of appropriate size, such as a size that is small enough to be received in tube. As Applicant should be well aware, this capability meets what Applicant has claimed regarding the intended use limitation "for receiving a stent delivery system". Applicant is directed to MPEP 2114 regarding the treatment of intended use/functional statements, such as the intended use/functional limitation "for receiving a stent delivery system".

Any two of the other recesses is inherently capable of holding a pair of scavenger packs which have sizes small enough to be received therein.

Art Unit: 3728

Inasmuch as Applicant has not recited the scavenger pack in the claim as structure but as intended use, the limitation, "adapted to retain an oxygen or moisture scavenger pack" is met by the reference.

4) Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross (5,318,543) in view of Brewer (4,928,830). The reference of Brewer, at 24 and at 38,40,34,36, suggests that the lid for a medical/surgical tray (22) may be made hinged on the tray and may be provided with interlocking engaging projections/lugs and recesses - i.e. a snap fit securement, for the apparent purpose of retaining the lid with the tray when it is opened and for securing the lid closed on the tray against inadvertent opening. Accordingly, it would have been obvious in view of Brewer to have provided the tray of Ross et al with a hinged lid and a snap fit securement comprising lugs and recesses for receiving said lugs.

5) Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross (5,318,543) in view of Holzwarth (4,730,726). The reference of Holzwarth at 19 suggests that a moisture absorbent pack may be placed in a package for a surgical instrument (12) in a different compartment than the surgical instrument but in communication therewith for the purpose of preventing moisture from remaining with the surgical instrument and affecting the surgical instrument. Accordingly, it would have been obvious in view of this teaching to have provided a recess in the tray of Ross et al for receiving a moisture absorbent scavenger pack separate from the surgical instruments in the tray but in communication therewith, for preventing moisture from affecting the instruments.

Art Unit: 3728

6) Claim 5 is objected to as being dependent on a rejected claim, but would be allowable if amended to include all of the limitations of the base claim and any intervening claim.

7) Applicant's arguments with respect to claim have been considered but are deemed to be moot in view of the new grounds of rejection.

8) Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

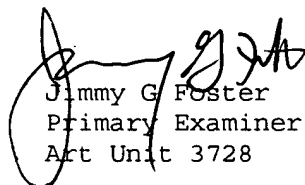
9) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax

Art Unit: 3728

phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G. Foster
Primary Examiner
Art Unit 3728

JGF
9 June 2005